

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 801/2002

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New Delhi, this the 2nd day of January, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Gopal Singh Tanwar, LDC
Grade-IV (DASS)
LDC-cum-Cashier & Asst. Accountant
Earlier : IN A & U, Tibbia College Campus

R/o B/29, A & U, Tibbia College Campus
Karol Bagh, New Delhi 110 005.

....Applicant
(By Advocate Sh. Vikas Dutta)

V E R S U S

1. The Lt. Governor-cum-Chairman
Ayurvedic & Unani Tibbia College Board
Lt. Governor House
Raj Niwas Marg
Delhi - 110 054.

2. Director (ISMH)/Administrator
A & U Tibbia College
Govt. of NCT of Delhi
9th floor, Player Building
New Delhi.

3. The Principal
A & U Tibbia College
Ajmal Khan Road, Karol Bagh
Delhi - 110 005.

....Respondents
(By Advocate Sh. Ajay Gupta)

O R D E R (ORAL)

By Hon'ble Sh. Shanker Raju, Member (J)

Applicant in this OA prayed for the following
reliefs :-

8 (i) restrain the respondents from
terminating the services of the applicant and ;

(ii) direct the respondents not treat
applicant a separate class and group and treat them at
par with other employees of Govt. of NCT of Delhi.

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F.13 (229)/82 quash the impugned office order No. F.13 (229)/82-TCBO/1153 dated 1-8-92 regarding recovery of the amount of annual increments from application and direct the same to be refunded. NB

(iv) quash the impugned office order No. F.13(229)/82-TCBO/429 dated 1-6-90 alongwith their memo No. F.13(229)/82-TCBO/1156 dated 1-8-92 whereby apprehending applicant about apprehension of termination of service.

2. In so far as the prayer for restraining the respondents from terminating the service of the applicants, they have stated in their reply that there is no proposal to dispense with the service of the applicant. This relief has become infructuous.

3. In so far as the claim contained in para 8 (ii) directing the respondents not to treat the applicant as a separate class and group and treat them at par with other employees of Govt. of NCT of Delhi is concerned having taken a policy decision, which is now under the control of Govt. of NCT of Delhi, this relief cannot be exceeded to.

4. Applicant is aggrieved by the order dated 1-8-92 passed by the respondents where they have decided to recover the amount from the increments drawn by the applicant from 1-4-82 to 1-4-89 and he is stagnating at the basic pay having failed in the typing test. He has sought direction to direct the respondents to treat him having passed typing test on

30-7-80 which has been recorded in the Audit Report and for which no separate entry has been recorded in the service book of the applicant.

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5. Factual matrix of the case are that the applicant was appointed as Helper Class IV on 17-7-78 and having passed in the typing test on 30-7-80 was promoted as LDC on regular time scale of pay on ad-hoc basis on 1-4-81 and from time to time accorded regular increments. The applicant being aggrieved by the directions of the respondents by the impugned order dt. 1-8-92 filed Civil Suit 3222/92 and the same is transferred in 1992 by the Notification issued on 1-5-98, by which Tibbia College has been taken over by the Govt. of NCT of Delhi and the employees have been treated as separate class. The Suit is transferred to this Court under the provisions of Section 29 of the Administrative Tribunals Act, 1985. Sh. Vikas Dutta, counsel for the applicant states that on the instructions of Principal A & U Tibbia College, applicant was subjected by the Manager of Tibbia College for typing test and he successfully passed and entry to that effect has also been made in the Audit Report of the Accounts Deptt. where it is stated that the applicant knows the typing well and necessary entry in this regard also has been made in the service book of the applicant. This is the grievance of the applicant that despite this no entry has been made in the service book which is the duty of the respondents and now he is being subjected to typing test and proposal has been made to the service department to seek exemption from passing typing test in accordance with FR 26 (14) (2) (2), as he attained 45 years of

age and once has passed the typing test in accordance with Rules and now on the pretext that he had not passed the typing test and not placing reliance on the test earlier passed, respondents, action is violative of principles of natural justice and no opportunity before recovery has been accorded to the applicant. All the amount has already been recovered from the applicant.

6. On the other hand, counsel for the respondents has strongly rebutted the contentions of the applicant and stated that the Manager has held the typing test without any written order and only on the telephonic conversation with the Principal of the College. Applicant is now ~~estopped~~ from claiming that he has earlier passed the test. He further states that moreover as the applicant has failed to pass the typing test, he is not entitled for the increments and the respondents have rightly recovered the amount.

7. I have carefully considered the rival contentions of the parties and perused the material on record.

8. Tibbia College has been taken over by the Govt. of NCT of Delhi in 1998. Before that the employees were governed under the Rules framed by the College and now they are governed ~~by~~ ^{under} the Rules of Govt. of NCT of Delhi. As per the official documents maintained by the Department, the applicant has been subjected to the typing test on the directions of the Principal and had passed the same. Moreover the audit

report shows that the applicant knows typing well and has passed the test and entry in the service book of the applicant was made to that extent. It is very unfortunate that despite this no entry regarding his typing test has been made by the respondents which is their duty in accordance with rules. Applicant cannot be made to suffer on account of mistake of the Government.

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9. Moreover on the other hand, issuance of impugned order dated. 1-8-92 which has the effect of visiting the applicant with civil consequences as his his earlier increments drawn have been decided to be recovered from him, no reasonable opportunity to show cause has been accorded to him which is violative of principle of natural justice and is also in violation of the law laid down by the Apex Court in Narsingha Patra & Anr. Vs. State of Orissa & Ors. (1997 SCC (L&S) 1773. As the applicant has in accordance with rules the then prevalent in Tibbia College had passed the typing test, he cannot be subjected to another typing test now on the plea that he has failed to passed the test earlier on two occasions and has not objected to it, there cannot be an estoppel against the rules as well as the applicant has successfully demonstrated that he has passed the test and entry to this effect has been made in the official documents of the respondents. He, now, cannot be compelled to appear in the typing test and the exemptions sought from passing the test would be irrelevant.

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10. In the result, for the aforesaid reasons, the OA is allowed. Impugned order dated 1-8-92 cannot be sustained and is accordingly quashed and set aside. Respondents are directed to treat the applicant as having passed typing test on 30-7-80 and in that event he would be entitled for restoration of his increments earlier drawn and the pay scale to which he is entitled by virtue of his continuation from 1980. These directions shall be complied with within two months from the date of receipt of a copy of this order. The consequential reliefs i.e. the amount which the respondents have already recovered should be restored back to him.

S. Raju

(Shanker Raju)
Member (A)

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